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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,791	06/29/2001	Anders Berkenstam	13425-040001 / 00244-US	8306
23911 7.	590 12/19/2003		EXAMINER	
CROWELL & MORING LLP			NICKOL, GARY B	
INTELLECTUAL PROPERTY GROUP P.O. BOX 14300			ART UNIT PAPER NUMBER	
WASHINGTON, DC 20044-4300			1642	

DATE MAILED: 12/19/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)			
Office Action Summary	09/896,791	BERKENSTAM ET AL.			
omee Head Tallmary	Examiner	Art Unit			
The MAILING DATE of this communication app	Gary B. Nickol Ph.D.	orrespondence address			
Period for Reply	sears on the cover sheet with the c	orrespondence address			
A SHORTENED STATUTORY PERIOD FOR REPL' THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a repl - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute - Any reply received by the Office later than three months after the mailing earmed patent term adjustment. See 37 CFR 1.704(b). Status	36(a). In no event, however, may a reply be time y within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).			
1) Responsive to communication(s) filed on 15 Ju	uly 2003.				
2a) This action is FINAL . 2b) ⊠ This	action is non-final.	n-final.			
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims					
 4) Claim(s) 1-11 and 13-21 is/are pending in the application. 4a) Of the above claim(s) 1,4-11 and 13-21 is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) 2 is/are rejected. 7) Claim(s) 3 is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. 					
Application Papers					
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) acc Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Example 11.	epted or b) objected to by the I drawing(s) be held in abeyance. See tion is required if the drawing(s) is ob	e 37 CFR 1.85(a). lected to. See 37 CFR 1.121(d).			
Priority under 35 U.S.C. §§ 119 and 120					
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority application from the International Bureau * See the attached detailed Office action for a list 13) Acknowledgment is made of a claim for domestic since a specific reference was included in the first 37 CFR 1.78. a) The translation of the foreign language profits 14) Acknowledgment is made of a claim for domestic reference was included in the first sentence of the second sec	is have been received. Is have been received in Application rity documents have been received in (PCT Rule 17.2(a)). In of the certified copies not received in priority under 35 U.S.C. § 119(a) is sentence of the specification or povisional application has been received in priority under 35 U.S.C. §§ 120	on No ed in this National Stage ed. e) (to a provisional application) in an Application Data Sheet. eived. and/or 121 since a specific			
Attachment(s)	_				
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Informal P	(PTO-413) Paper No(s) atent Application (PTO-152)			

Art Unit: 1642

Response to Amendment

The Amendment filed July 15, 2003 (Paper No. 22) in response to the Office Action of January 15, 2003 is acknowledged and has been entered.

Claims 1-11, 13-21 are pending.

Claims 1, 4-11, 13-21 have been withdrawn from further consideration by the examiner under 37 CFR 1.142(b) as being drawn to non-elected inventions.

Claims 2-3 are pending and are currently under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Objection Maintained:

The specification is remains objected to because it contains an embedded hyperlink and/or other form of browser-executable code (i.e. see <u>page 14</u>, line 1). Applicant is required to delete all embedded hyperlinks and/or other form of browser-executable codes. See MPEP § 608.01.

Claim 3 remains objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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New Rejections:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The written description in this case only sets forth an isolated mammalian IPAS polypeptide encoded by a nucleic acid molecule comprising SEQ ID NO:2 and therefore the written description is not commensurate in scope with the claims drawn to complementary nucleic acid sequences encoding functionally equivalent modified forms of IPAS polypeptides which read on allelic variants.

The claims are drawn to isolated polypeptides encoded by nucleic acid molecules that are capable of hybridizing, under stringent hybridization conditions, with nucleotide sequences complementary to the polypeptide-coding region of SEQ ID NO:2 wherein said nucleic acid molecules code for biologically active mammalian IPAS polypeptides or functionally equivalent modified forms thereof. The claims further include isolated polypeptides encoded by nucleic acid

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molecules comprising a nucleic acid sequence that is degenerate as a result of the genetic code to a nucleotide sequence of the latter (e.g. SEQ ID NO:2 or any stringent hybridized complements thereof) that code for biologically active mammalian IPAS polypeptides or functionally equivalent modified forms thereof. However, the claims do not require that the encoded polypeptide possess any particular biological activity, nor any particular conserved structure, or other disclosed distinguishing feature. Thus, the claims are drawn to a genus of encoded polypeptide variants.

To provide adequate written description and evidence of possession of a claimed genus, the specification must provide *sufficient* distinguishing identifying characteristics of the genus. The factors to be considered include disclosure of complete or partial structure, physical and/or chemical properties, functional characteristics, structure/function correlation, methods of making the claimed product, or any combination thereof. In this case, the broadly claimed polypeptides include a whole universe of non-coding and or coding polynucleotide fragments. Clearly, it would be expected that a substantial number of the hybridizing or complementary polynucleotides encompassed by the claims **would not** share either structural or functional properties with mammalian IPAS polypeptides. Accordingly, in the absence of sufficient recitation of distinguishing identifying characteristics, the specification does not provide adequate written description of the claimed genus.

Vas-Cath Inc. v. Mahurkar, 19USPQ2d 1111, clearly states "applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention. The invention is, for purposes of the 'written description' inquiry, whatever is now claimed." (See page 1117.) The specification does not "clearly allow persons of

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ordinary skill in the art to recognize that [he or she] invented what is claimed." (See *Vas-Cath* at page 1116). As discussed above, the skilled artisan cannot envision the detailed chemical structure of the encompassed genus of polypeptides, and therefore conception is not achieved until reduction to practice has occurred, regardless of the complexity or simplicity of the method of isolation. Adequate written description requires more than a mere statement that it is part of the invention and reference to a potential method of isolating it. The compound itself is required. See *Fiers v. Revel*, 25 USPQ2d 1601 at 1606 (CAFC 1993) and *Amgen Inc. v. Chugai Pharmaceutical Co. Ltd.*, 18 USPQ2d 1016.

One cannot describe what one has not conceived. See *Fiddes v. Baird*, 30 USPQ2d 1481 at 1483. In *Fiddes*, claims directed to mammalian FGF's were found to be unpatentable due to lack of written description for that broad class. The specification provided only the bovine sequence.

Therefore, only an isolated mammalian IPAS polypeptide encoded by a nucleic acid molecule comprising SEQ ID NO:2, but not the full breadth of the claim meets the written description provision of 35 U.S.C. §112, first paragraph. Applicant is reminded that *Vas-Cath* makes clear that the written description provision of 35 U.S.C. §112 is severable from its enablement provision (see page 1115).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Bradfield *et al.* (WO 99/28464, 10 June 1999).

Bradfield *et al.* teach (see attached sequence listing) an isolated mammalian IPAS polypeptide encoded by:

a) a nucleic acid molecule comprising a nucleotide sequence which is capable of hybridizing, under stringent hybridization conditions, with a nucleotide sequence complementary to the polypeptide-coding region of SEQ ID NO:2 which inherently codes for a biologically active mammalian IPAS polypeptide or functionally equivalent modified form thereof.

b) a nucleic acid molecule comprising a nucleic acid sequence which is degenerate as a result of the genetic code to a nucleotide sequence of the latter of SEQ ID NO:2 or any stringent hybridized complement thereof which codes for a biologically active mammalian IPAS polypeptide or functionally equivalent modified form thereof.

All other rejections and or objections are withdrawn in view of applicant's amendments and arguments there to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary B. Nickol Ph.D. whose telephone number is 703-305-7143. The examiner can normally be reached on M-F, 8:30-5:00 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa can be reached on 703-308-3995. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Gary B. Nickol, Ph.D. Examiner
Art Unit 1642

GBN December 12, 2003

Youy B. Nickol

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Claim 6; Page 101; 106pp; English.
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                                                                                            comprises: (a) an oligo-dT primer and an oligonucleotide complementary trand of a polynucleotide which complementary trand of a polynucleotide which complementary to the complementary strand of a polynucleotide which comprises one of the 5602 nucleotide sequences defined in the specification, where the coligonucleotide comprises at least 15 nucleotides; or (b) a combination of an oligonucleotide comprising a sequence complementary to the complementary strand of a polynucleotide which comprises a 5'-end complementary strand of a polynucleotide which comprises a 5'-end complementary to a polynucleotide which comprises a 5'-end sequence omplementary to a complementary and confidence of the specification. The primer sets can be used in antisense therapy and complementary full-length cDNAs. The primers are also useful for the proteins encoded by the full-length cDNAs. The primers are also useful for the proteins encoded by the full-length cDNAs. The primers allow obtaining of the full-length cDNAs. The primers allow obtaining of the full-length cDNAs. The primers allow obtaining of the full-length cDNAs assists and AAH13628 and converses the proteins encoded by converse and the complementary to an analyse of the primers and the complementary to a compl
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11-JAN-2000;
02-MAY-2000;
                                      AAB95893 represent human amino acid sequences; AAB92446 to represent oligonucleotides, all of which are used in the exemplification of the present invention
                                                                                                                                                                                                                                                                                                                                                                                                                                                      The present invention describes primer sets for synthesising full-length cDNAs defined in the specification. Where a prime {\sf range}
                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    Claim 8;
                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         primer sets for synthesizing \hat{polynucleotides}, particularly the 5602 full-length cDNAs defined in the specification, and for the detection and/or diagnosis of the abnormality of the proteins encoded by the full-length cDNAs -
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